

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

The STATE OF TEXAS et al.,

Plaintiffs,

V.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY et al.,

Defendants, and

VALERIE LAVEUS et al.,

Intervenor Defendants.

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Civil Action No. 6:23-CV-00007

Judge Drew M. Tipton

**DECLARATION OF ESTHER H. SUNG
IN SUPPORT OF INTERVENOR DEFENDANTS' MOTION TO RECONSIDER OR
CLARIFY, OR IN THE ALTERNATIVE MOTION FOR RELIEF FROM ORDER
DENYING INTERVENOR DEFENDANTS' MOTION FOR LEAVE TO AMEND
WITNESS AND EXHIBIT LIST**

1. My name is Esther H. Sung, my date of birth is March 12, 1980, and my business address is P.O. Box 27280, Los Angeles, CA 90027.

2. I am the legal director of Justice Action Center and counsel of record for the Intervenor Defendants in the above-captioned action. I am a member in good standing of the State Bar of California and have applied for admission to the Southern District of Texas. I have been admitted pro hac vice in this action.

3. I respectfully submit this declaration in connection with Intervenor Defendants' Motion to Reconsider Order Denying Intervenor Defendants' Motion for Leave to Amend Witness and Exhibit List. The purpose of this declaration is to authenticate and provide context for the exhibits cited in the Motion.

4. The exhibits to the Motion, which I describe below, are drawn exclusively from emails between the parties concerning the trial exhibits in this matter.

5. **Exhibit A** is a true and correct copy of an e-mail I sent to Mr. Ryan Walters, counsel for Plaintiff States, and Ms. Elissa Fudim, counsel for Federal Defendants, on August 8, 2023, reminding Mr. Walters of language in Intervenor Defendants' Witness and Exhibit List, ECF No. 207, stating that per this Court's scheduling order, ECF No. 159, Intervenor Defendants "consider all exhibits, affidavits, and declarations submitted in support of previous briefing as included in the trial record," and stating that Intervenor Defendants plan on "relying on evidence attached to our PI briefing at trial."

6. **Exhibit B** is a true and correct copy of an e-mail I sent to Mr. Ryan Walters and Ms. Elissa Fudim on August 9, 2023, providing for their review a draft Motion for Leave to Amend Witness and Exhibit List. I sent this e-mail after meeting and conferring via video conference with Mr. Walters and Ms. Fudim about motions to exclude, during which video conference Mr. Walters admitted that he had not read Intervenor Defendants' Witness and Exhibit List closely and had not realized that Intervenor Defendants had incorporated into their Witness and Exhibit List the exhibits and declarations submitted in support of Intervenor Defendants' Opposition to Motion for Preliminary Injunction, ECF No. 175, ECF No. 175-1 through 175-76. The draft Motion for Leave to Amend Witness and Exhibit List states clearly that Intervenor Defendants would request leave from the Court to add: (1) three additional

exhibits that were inadvertently omitted from Intervenor Defendants' August 2 Witness and Exhibit List, and (2) for the sake of clarity for all Parties and the Court, the exhibits and declarations previously attached to Individual Defendants' Opposition to Plaintiff States' Motion for a Preliminary Injunction, ECF No. 175, and which had previously been incorporated at Intervenor Defendants' August 2 Witness and Exhibit List, ECF No. 207.

7. **Exhibit C** is a true and correct copy of an e-mail I received from Mr. Walters on August 9, 2023, stating that the draft Motion for Leave to Amend Witness and Exhibit List "looks good to us."

8. **Exhibit D** is a true and correct copy of an e-mail I sent to Mr. Ryan Walters and Ms. Elissa Fudim on August 10, 2023, providing for their review a revised draft Motion for Leave to Amend Witness and Exhibit List. The draft Motion for Leave to Amend Witness and Exhibit List clearly states that Intervenor Defendants were requesting leave from the Court to add: (1) three additional exhibits that were inadvertently omitted from Intervenor Defendants' August 2 Witness and Exhibit List, and (2) for the sake of clarity for all Parties and the Court, the exhibits and declarations previously attached to Individual Defendants' Opposition to Plaintiff States' Motion for a Preliminary Injunction, ECF No. 175, and which had previously been incorporated at Intervenor Defendants' August 2 Witness and Exhibit List, ECF No. 207.

9. **Exhibit E** is a true and correct copy of an e-mail I received from Mr. Walters at 10:09 pm on Sunday, August 13, 2023, expressing Plaintiffs' intention to

file a motion to strike Intervenor Defendants' Amended Witness and Exhibit List, which Mr. Walters claimed "greatly exceeds the bounds of what we agreed to and what the motion for leave explicitly states."

10. **Exhibit F** is a true and correct copy of an e-mail I sent to Mr. Walters at 11:15 pm on Sunday, August 13, 2023, explaining that Intervenor Defendants' Amended Witness and Exhibit List consists of exactly what the parties had previously discussed, namely, 65 exhibits included on Intervenor Defendants' original Witness and Exhibit List filed on August 2, 2023, ECF No. No. 207; three new exhibits that I had circulated by e-mail to Plaintiffs and Federal Defendants on August 8, 2023; and 76 exhibits previously submitted in support of Intervenor Defendants' Opposition to Motion for Preliminary Injunction filed on June 20, 2023, ECF No. 175, and which had previously been incorporated at Intervenor Defendants' August 2 Witness and Exhibit List, ECF No. 207.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on this 14th day of August 2023.

/s/ Esther H. Sung
Esther H. Sung, Declarant
California Bar No. 255962
Application for Admission Pending
Justice Action Center
P.O. Box 27280
Los Angeles, CA 90027
Telephone: (323) 450-7272
Facsimile: (323) 450-7276
esther.sung@justiceactioncenter.org